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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of:

Order Instituting Informational Proceeding on a Greenhouse Gas Emissions Cap

Docket 07-OIP-01

**COMMENTS OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON THE JOINT STAFF
PROPOSAL FOR A GHG REPORTING PROTOCOL**

July 2, 2007

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**COMMENTS OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON THE JOINT STAFF
PROPOSAL FOR A GHG REPORTING PROTOCOL**

In accordance with Rule 14 of the Rules of Practice and Procedure of the Public Utilities Commission (“CPUC”) of the State of California, the California Municipal Utilities Association (“CMUA”) hereby files these Comments on the *Joint California Public Utilities Commission and California Energy Commission Staff Proposal for an Electricity Retail Provider GHG Reporting Protocol* (“Staff Proposal”) filed June 12, 2007, in Rulemaking 06-04-009. CMUA also files these Comments with the California Energy Commission (“CEC”) in Docket 07-OIIP-01. In addition, CMUA submits answers to questions posed in the *Administrative Law Judges’ Ruling Regarding Comments on Staff Reporting Proposal* (“ALJ Ruling”) filed June 12, 2007, in the R.06-04-009. In these Comments, the CPUC and CEC will collectively be called the “Joint Agencies.”

I. INTRODUCTION

CMUA represents California’s publicly owned electric utilities (“POUs”) serving approximately one-quarter of the electricity load in the state. All Comments in this filing represent the consensus position of CMUA’s members. As requested in the ALJ Ruling, these Comments are organized using the same outline used in the Staff Proposal, although these Comments discuss the chapters slightly out of order.

**II. SELECTED COMMENTS ON STAFF PROPOSAL CHAPTER 2 –
DEFINITIONS AND CRITERIA**

A. Section 2.1.1 - Retail Provider.

The Staff Proposal correctly identifies that Assembly Bill 32 (“AB 32”) applies to “Retail Providers of electricity” which includes load serving entities (“LSEs”) which are CPUC-jurisdictional and POUs which are not CPUC-jurisdictional.¹ Parties to this Rulemaking should use the term Retail Provider when referring to these collective entities.

¹ Cal. Health & Safety Code § 38530(b)(2). Accordingly, AB 32 applies to LSEs as defined in Public Utilities Code § 380(j) to mean every electrical corporation, electric service provider, or community choice aggregator serving end-use customers in the state. AB 32 also applies to POUs which means any "local publicly owned electric utility" as defined in Public Utilities Code § 9604.

To avoid confusion and maintain consistency with AB 32, the term “LSE” should only be used when referring solely to CPUC-jurisdictional entities that serve retail load.

B. Sections 2.1.10 and 2.1.11 – Leakage and Contract Shuffling.

CMUA believes that the Staff Proposal expands the definition of “leakage” beyond that intended by AB 32 and improperly uses it within the definition of “contract shuffling.” AB 32 defines “leakage” as “a reduction in emissions of greenhouse gases *within the state* that is offset by an increase in emissions of greenhouse gases *outside the state*.”² The AB 32 definition of leakage incorporates a geographical component that is based on where the GHG emissions are actually produced. The purest example of leakage is when a business shuts down an in-state facility in order to avoid California’s GHG regulations and then replaces it with a similar facility outside the state. In the case of a manufacturing facility such as a cement plant or paper mill, the emissions would then be produced outside California and not within the state.

For electric utilities, the concept of leakage is approached head-on by AB 32, which provides that “statewide greenhouse gas emissions” (“Statewide GHG Emissions”) include not only the GHG emissions produced within California but also all GHG emissions “from the generation of electricity delivered to and consumed in California, . . . , whether the electricity is generated in state or imported.”³ The AB 32 definition of Statewide GHG Emissions for the electric sector has a geographical component based on *where the electricity is consumed, regardless of where the GHG emissions are produced.* Therefore, a Retail Provider may not avoid AB 32 regulation merely by serving its load with imported power to supplant generation resources located in California. This is an important distinction that substantially reduces the opportunities for electric utilities to cause leakage as defined by AB 32.

The Staff Proposal defines “contract shuffling” as a “system of contractual arrangements that could be used to facilitate leakage when electricity is imported from an uncapped system into a capped system” and offers two examples. In example 1, the Staff Proposal states that “contract shuffling would occur if a California retail provider enters into a

² Cal. Health & Safety Code § 38505(j) (emphasis added).

³ Cal. Health & Safety Code § 38505(m).

contract with a supplier for power from a specified low-carbon facility, but the payments to the supplier are actually used to increase generation at a different plant or a mix of plants.” By interpreting this language in combination with other statements in the Staff Proposal, CMUA presumes that staff is recommending the prohibition of contracts with low- and zero-GHG facilities located in uncapped states regardless of any knowledge or intent of the Retail Provider. While it is important that the reporting protocols address contract-shuffling, it is imperative that the reporting requirements do not impermissibly impute malfeasance where a legitimate and permissible contractual transaction takes place. CMUA notes that such an occurrence would not result in leakage as defined in AB 32 unless the Retail Provider switched from a resource *physically located in California* and caused “a reduction in emissions of greenhouse gases *within the state* that [was] offset by an increase in emissions of greenhouse gases *outside the state*.”

In the second example, the Staff Proposal states that contract shuffling would occur if “a California retail provider stopped buying power from a high-carbon resource in favor of a lower-carbon resource, but the high-carbon resource was simply resold to another buyer in an uncapped region.” In CMUA’s understanding, this example would not constitute leakage as defined by AB 32. If the high carbon resource is located outside California, then there will be *no increase* in GHG emissions physically produced outside California regardless of where it’s consumed. If the high carbon-resource is located within California, then there will be *no reduction* in GHG emissions physically produced inside California regardless of where it is consumed. Hence, CMUA understands that this example will never result in “a reduction in emissions of greenhouse gases *within the state* that is offset by an increase in emissions of greenhouse gases *outside the state*.”

The bottom line is that the Staff Proposal incorrectly combines the concepts of leakage and contract shuffling whereby staff holds Retail Providers accountable for GHG emissions produced outside the state that have no relation to any activities inside the state. If the intent of the Joint Agencies is to reduce or eliminate the higher-emission out-of-state resource after the California entity relinquishes its legal interest in that resource, that intent is clearly beyond the legal purview of AB 32. CMUA asks the Joint Agencies to reject this overly broad construction.

C. Section 2.2.2 – Evolution of the Reporting System.

CMUA acknowledges the importance of the Joint Agencies' task to develop sound recommendations for reporting protocols in the furtherance of achieving Statewide GHG Emission reductions. CMUA supports the Staff Proposal recommendation for the Joint Agencies to continuously improve the reporting methodology as new information is learned.

D. Section 2.3 - Criteria.

When the California Air Resources Board ("CARB") eventually implements its reporting protocols, it is probable that vertically integrated electric utilities will be required to report emissions both as power generating facilities and as Retail Providers. Under these concepts, such utilities will report on power they generate on the one hand, and power they sell to end users (together with power it consumes itself in the process of providing service to the end users, such as its fleet emissions and utility consumed power) on the other hand. Thus, integrated electric utilities will be reporting the same data under multiple categories - generation, Retail Provider, utility consumption, etc. In recent public workshops at CARB, CARB staff members indicated that the purpose of such dual reporting is to provide data against which each reporting set can be reconciled.

The Staff Proposal identifies seven criteria for establishing final reporting protocol methods: accuracy, consistency, simplicity, transparency, minimization of unintended consequences, setting appropriate policy signals, and expandability. In order to meet these criteria, generation data will have to be evaluated and maintained separately from the end-use data so as to ensure that the power generated by a utility then used to serve that utility's load, external and internal, is not "double-counted."

CMUA understands that the CEC and CARB intend to develop a unified GHG reporting system, and encourages the CPUC to participate in this effort as well. Utilities already expend substantial time, effort, and cost preparing and submitting existing mandatory reporting documents. A system that uses existing reporting forms such that utilities would submit one set of forms simultaneously to all agencies for all purposes would be a positive step toward managing the burden of the new GHG reporting requirements.

CMUA encourages and fully supports the goal of unified reporting. CMUA member utilities would welcome the opportunity to participate in the development of comprehensive

reporting forms. To avoid interpretive confusion that could arise from the breadth and complexity of the information being reported, the unified form must be organized to ensure that the utilities are able to report the proper categories of information in a manner and location that such information can be usefully extracted by the respective agencies, and to ensure that the extracted data is accurately allotted to its appropriate reporting category.

III. COMMENTS ON STAFF PROPOSAL CHAPTER 7 – EMISSION FACTORS

A. Section 7.2.2 – State approved supplier-based emission factors.

CMUA encourages the use of a database in which both in-state and out-of-state suppliers may demonstrate an actual emission factor for their portfolios or unit-specific facilities.

B. Section 7.3.1 – Net generation and emission from each owned facility.

CMUA supports responsibility for reporting GHG emissions being allocated on the basis of electricity consumed in California from a specific jointly-owned powerplant, and not the basis of an equity share of such jointly-owned powerplant.

IV. COMMENTS ON STAFF PROPOSAL CHAPTERS 4 AND 9 – SOURCE CATEGORIES AND CONTRACT SHUFFLING

Certain aspects of Staff Proposal Chapters 4 and 9 cause great concern amongst CMUA members, particularly when coupled with various oral statements made by the Staff Proposal’s authors in public workshops. Some of the efforts of the Joint Agency staff to “represent the atmosphere,” although laudable, are beyond the scope of AB 32 authority. CMUA has read Chapters 4 and 9 many times in attempts to discern staff’s true proposal for the treatment of existing low- and zero-GHG facilities and these Comments are not meant to be overly reactionary. Nevertheless, there are several Staff Proposal concepts that are so adverse to successful implementation of AB 32 that CMUA strongly argues against them.

In essence, Retail Providers must be free to procure low- and zero-GHG resources for AB 32 compliance purposes regardless of their geographical location and whether or not those resources currently exist. CMUA acknowledges that a reporting mechanism must be developed to ensure that GHG emission reductions achieved are real, permanent, quantifiable,

verifiable, and enforceable by CARB.⁴ As a necessary component of this, the reporting mechanism should be designed to mitigate the potential for Retail Providers to *falsely* claim that contracted electricity is coming from a specific resource when actually the contract does not so provide. On the other hand, the reporting protocols must also recognize legitimate and lawful business practices that pertain to the purchase of electricity, and the Joint Agencies will exceed the bounds of AB 32 authority if there is an attempt to mitigate the *potential* for contract shuffling by proscribing all contracts with out-of-state low- and zero-GHG facilities will exceed the bounds of AB 32 authority

CMUA's Comments are offered in a constructive fashion and should not be construed as an attack on the Joint Agencies or staff. Yet, in no uncertain terms, CMUA provides numerous arguments against any attempt to restrain the ability of Retail Providers to lawfully comply with AB 32 emission reduction requirements using out-of-state low- and zero-GHG generating resources. The Joint Agencies efforts are correctly concentrated on working with parties to develop reporting mechanisms to accurately "separate the wheat from the chaff" in policy proposals, and to that end CMUA notes that further discussion and clarification are necessary with regard to the means by which contract shuffling threats (real or perceived) are addressed in the reporting protocols.

CMUA disagrees strongly with the concept and discussion in Section 4.1.4 on supposed contract shuffling. Staff suggests that one criterion for making a determination of whether or not a transaction is contract-shuffling could be a "long-standing contractual relationship between a retail provider and a specified plant."⁵ Yet, when it comes to new contracts with existing facilities, staff utilizes a criterion unfounded in the language AB 32, in providing that the contract *must* induce *new* low- or zero-GHG generation.

Staff believes that *new claims to existing low- or zero-GHG plants should be treated with some skepticism* since there is *little reason* to believe that an agreement between a retail provider and an existing plant will induce generation that would not have occurred anyway.⁶

⁴ Cal. Health & Safety Code § 38562(d)(1).

⁵ Staff Proposal at 11.

⁶ Staff Proposal at 11 (emphasis added).

CMUA does not believe that there is any evidence in the record to support a notion that such an arrangement “*should be treated with some skepticism.*” Furthermore, there is no requirement in AB 32 that emission reduction measures must *induce* new low- or zero-GHG generation. Accordingly, Section 4.1.4 dealing with facility-specific contracts goes too far in placing a presumption of illegitimacy on contracts with out-of-state low- or zero-GHG resources that currently exist. CMUA acknowledges that some activities fitting within the definition of “contract shuffling” are *possible* if a Retail Provider so intends. However, the scope of these activities is very narrow and an acceptable means to address this concern is an accurate reporting system combined with clearly defined criteria for identifying the few activities that *actually* shuffle contracts contrary to AB 32’s intent.⁷ As will be discussed below, CMUA disagrees with the Staff Proposal’s expansive interpretation blurring the line between lawful, beneficial activities and those activities which are designed to manipulate and circumvent AB 32. CMUA offers numerous reasons why the Staff Proposal’s several recommendations should be rejected as against public policy, common sense, prudent utility practice, and California law.

1. **AB 32 does not authorize CARB to exercise jurisdiction over out-of-state facilities selling electricity that is consumed outside California, nor can Retail Providers be held accountable for those out-of-state actions.** AB 32 applies to “statewide greenhouse gas emissions” [which] means the total annual emissions of greenhouse gases *in the state*, including all emissions of greenhouse gases *from the generation of electricity delivered to and consumed in California*, . . . , whether the electricity is generated in state or imported.”⁸ AB 32 does not purport to regulate greenhouse gas emissions from generation outside California if the electricity is not consumed in California. In no way does or may AB 32 authorize CARB to place restrictions on which out-of-state sink may be matched with each out-of-state source. Therefore, if a California Retail Provider procures low- or zero-GHG energy from an existing renewable facility, and pays to have it delivered to California, the GHG emissions from that generator are defined as Statewide GHG Emissions. Thus, under AB 32, it is of no consequence, in the scenario discussed in example 1 above, what the seller then does with the proceeds it receives from selling a lower-emission resource to a California Retail Provider. Nor should the California Retail Provider be held responsible for what the seller eventually does in a separate transaction with another buyer. CARB cannot regulate the out-of-state seller, nor can the Retail Provider lawfully insert contractual terms to restrict

⁷ Staff Proposal at 36, Chapter 9, para. 8.

⁸ Cal. Health & Safety Code § 38505(m).

the resources the seller uses to meet its own load or the loads of other buyers in separate transactions. Yet, the Staff Proposal suggests these very things in a purported example of contract shuffling that it calls “facility-swapping.”⁹ The Staff Proposal defines this to be when “a California retail provider claims[!] to receive power from a specific facility, when its purchases actually induce generation from another facility or mix of facilities.”¹⁰ According to the Staff Proposal, it is not necessary that California Retail Providers be aware of the facility swapping because – “*it may happen without their knowledge or consent.*”¹¹ Therefore, the Joint Agencies should reject any Staff Proposal recommendations to the extent they hold Retail Providers accountable for the actions of out-of-state facilities that do not produce any Statewide GHG Emissions.

Similarly, the Joint Agencies should not attempt to prohibit transactions described in example 2 above in which a California Retail Provider sells a higher-emission resource and replaces it with an existing lower-emission resource. Such a prohibition would have the effect of impermissibly capping the GHG emissions of out-of-state sellers and out-of-state generation *not consumed in California*. As noted above, AB 32 limits the jurisdiction of CARB to reducing emissions actually produced within California and “from the generation of electricity delivered to and consumed in California.”

2. **AB 32 does not have an “additionality” requirement for resources used by Retail Providers to meet the adopted Statewide GHG Emissions limits.** AB 32 provides that CARB shall determine what the Statewide GHG Emissions level was in 1990 and approve an equivalent Statewide GHG Emissions limit to be achieved by 2020.¹² In addition, CARB shall approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of greenhouse gases by 2020.¹³ Health & Safety Code Section 38562 requires CARB to adopt, by regulation, GHG emission limits and emission reduction measures to achieve GHG emission reductions in furtherance of achieving the Statewide GHG Emissions limit.¹⁴ Any regulation adopted by CARB shall ensure, among other things, that the GHG emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by CARB.¹⁵

⁹ Staff Proposal at 35, Chapter 9, para. 3.

¹⁰ Staff Proposal at 35, Chapter 9, para. 3.

¹¹ Staff Report at 35. CMUA notes that even if this activity happens, it may actually result in *reducing* the marketability of coal-based resources.

¹² Cal. Health & Safety Code § 38550.

¹³ Cal. Health & Safety Code §§ 38560, 38561(a).

¹⁴ Cal. Health & Safety Code § 38562(a).

¹⁵ Cal. Health & Safety Code § 38562(d)(1).

As a complement to these mandatory requirements on CARB, CARB *may* include market-based compliance mechanisms for compliance with the regulations adopted pursuant to Section 38562.¹⁶ AB 32 only requires reductions from the market-based compliance mechanisms (commencing with Section 38570) to be in addition to any GHG emission reduction otherwise required by law or regulation (e.g., the requirements under Section 38562) and any other greenhouse gas emission reduction that otherwise would occur.¹⁷ These additional requirements apply only to the optional market-based systems and not to the mandatory emission reduction measures adopted by CARB. Therefore, AB 32 has no requirements that a contract for an existing resource would have to create emission reductions in areas other than Statewide GHG Emissions. Any reporting requirement that is imposed to meet such a requirement is beyond the scope of AB 32 and CARB's authority.

3. **The Staff Proposal recommendations will violate the Reporting Protocol criteria set forth in Staff Proposal Chapter 2, Section 2.3, by causing unintended circumstances and sending the wrong policy signals.** The Staff Proposal prevents California utilities from seeking and procuring existing eligible renewable resources outside California. It also prevents utilities from procuring existing low carbon resources located outside California in order to reduce GHG emissions from the electricity delivered to and consumed in California. Renewable resources are of paramount importance; utilities will be placing greater reliance on expanding their renewable portfolios, as well as meeting new load growth projections.
4. **The Staff Proposal recommendations will violate the Reporting Protocol criteria set forth in Staff Proposal Chapter 2, Section 2.3, by inhibiting expandability.** Most states in the western interconnect have renewable portfolio standards ("RPS").¹⁸ This Staff Proposal would limit the market for renewable resources across state lines. Hence, it is possible that any regulation following the Staff Proposal recommendation would violate the U.S. Commerce Clause.¹⁹ If the Joint Agencies do proceed with any recommendations that restrict out-of-state facilities, CMUA requests that a separate Ruling be issued requesting legal briefs on Commerce Clause issues prior to any action by the Joint Agencies.
5. **The Final Market Advisory Committee Report downplays any concerns of contract shuffling.** The Staff Proposal cited the draft Market Advisory Committee ("MAC") Report to support its concerns regarding contract shuffling. However, that MAC Report does not provide support for the Staff Proposal's

¹⁶ Cal. Health & Safety Code § 38570(a).

¹⁷ Cal. Health & Safety Code § 38562(d)(2).

¹⁸ Database of State Incentives for Renewables and Efficiency, found at <http://www.dsireusa.org/index.cfm?&CurrentPageID=9&EE=0&RE=1>

¹⁹ See *Draft Recommendations for Designing a Greenhouse Gas Cap-and-Trade System for California*, Market Advisory Committee Report (June 1, 2007) at 41.

position.²⁰ The MAC Report states that the “introduction of a California cap-and-trade program could induce . . . [t]his shuffling of contracts” and that “some observers are concerned that contract shuffling could dramatically undermine a California cap-and-trade program” by noting that “there is sufficient generation capacity within the eleven states in the western power interconnect to entirely comply with expected emission reductions in California without any real change in generation.”²¹ The MAC Report, however, downplays this and states that “the opportunities for contract shuffling may be more limited than would initially appear” mainly due to the CPUC’s procurement rule, the emission performance standard of SB 1368, and the fact that coal-fired plants which have the only significant incentive to shuffle comprise less than 1 percent of the imported power.²² In light of this, the solution from the MAC Report “encourages” the CPUC/CEC/CARB “to develop an extensive plan for how to account for emissions associated with imported power.”²³ The MAC Report does not recommend or even mention proscribing Retail Providers from procuring generation from out-of-state low- and zero-GHG facilities.

6. **There should be no presumption of illegitimacy for a Retail Provider’s resource procurements from out-of-state low- and zero-GHG facilities.** A contract that at the time it was made, had both sufficient consideration and a lawful object, is enforceable and should have a presumption of legitimacy.²⁴ The “skepticism” cited in the Staff Proposal, without more substantive evidence of some malfeasance, can hardly overcome the existence of a valid contract between consenting parties that has sufficient consideration (a market-based price in exchange for the delivery of energy that includes all environmental attributes) and a lawful object (the procurement of low- or zero-GHG resources for the purpose of reducing a utility’s resource emissions). Furthermore, the legitimacy and lawfulness of this contract can hardly be suspect as a consequence of subsequent and unrelated acts of the out-of-state seller. For instance, if at some point later the out-of-state seller procures high-GHG resources to replace the low-GHG resources it lawfully sold to the California Retail Provider, this lawful subsequent act does not nullify the consideration or object of the original contract. The courts will not invalidate a contract unless its contravention of sound public policy is entirely plain²⁵ and the burden is on the contract’s opponent to show that a contract’s enforcement would be in violation of settled public policy.²⁶ The CPUC/CEC

²⁰ Staff Proposal at 34, Chapter 9, para. 1.

²¹ *Recommendations for Designing a Greenhouse Gas Cap-and-Trade System for California*, Market Advisory Committee Report (June 30, 2007) at 44.

²² *Id.*

²³ *Id.*

²⁴ Cal. Civ. Code §§ 1550, 1595, 1596, 1607, 1614, 1615; Cal. Evidence Code § 500.

²⁵ *Rosen v. State Farm General Ins. Co.*, 30 Cal. 4th 1070, 1082 (2003).

²⁶ *Moran v. Harris*, 131 Cal. App. 3d 913, 920 (1982).

should be even more reticent to declare that all contracts procuring resources from out-of-state facilities come equipped with a presumption of impropriety.²⁷

7. **Since most states in the Western Interconnection have renewable portfolio standards, there should be a significant demand for existing low- and zero-GHG resources that should minimize the potential for contract shuffling.** A central tenet in the theory of contract shuffling is that an out-of-state seller in a region with no GHG cap will make a knowing exchange of its low GHG resource and then replace it with higher emitting resources. The theory presupposes that the out-of-state seller will have no regulatory requirements to purchase low-GHG resources, and therefore, may shuffle resources with impunity. Yet, this theory does not take into account that an RPS will also inhibit the benefits of shuffling and almost all of the states in the western interconnect have significantly stringent RPS requirements.²⁸ Therefore, CMUA believes that claims of widespread contract shuffling are both unrealistic and unsupported *since there is little reason to think* that California utilities will have the only claim on available low- and zero-GHG resources in the western interconnect. Therefore, CMUA argues that it's basically moot whether or not other states have GHG caps. The renewable resources will be in demand for their renewable attributes and California utilities will procure them on the market then just as they do today. There is *every reason to think* that the environmental attributes will remain bundled with the energy and it seems illogical that out-of-state entities would be willing to shuffle their contracts when those resources are needed to meet their own RPS requirements.
8. **SB 1368 mandates that Retail Providers only enter into long-term financial commitments for baseload generation from resources that comply with the emission performance standard and the CEC based its Negative Declaration supporting the adoption of its SB 1368 regulations on the fact that POUs will procure energy resources from the market's existing supply of low- and zero-GHG generation in the WECC.** The CPUC's rules for implementing SB 1368 are currently in force and the CEC's proposed SB 1368 regulations should be in force within the next couple of months. These rules and regulations place significant restrictions on the procurement of unspecified resources to meet a Retail Provider's load. Therefore, the pool of resources that Retail Providers may procure to meet their long-term baseload needs are limited.

SB 1368 directed the Energy Commission to establish an emission performance standard for long-term financial commitments in baseload generation by POUs.²⁹

²⁷ Bovard v. Am. Horse Enters., 201 Cal. App. 3d 832, 839 (1988).

²⁸ These include: Arizona (15% by 2025); California (20% by 2010); Colorado (20% by 2020); Montana (15% by 2015); Nevada (20% by 2015); New Mexico (20% by 2020); Oregon (25% by 2025); Texas (5880 MW by 2015); and Washington (15% by 2020). Database of State Incentives for Renewables and Efficiency, <http://www.dsireusa.org/index.cfm?&CurrentPageID=9&EE=0&RE=1>

²⁹ These proposed regulations have been submitted for review by the Office of Administrative Law but are not currently in force.

In supporting the adoption of the proposed regulations, the CEC prepared an Initial Study and Negative Declaration pursuant to the California Environmental Quality Act. In declaring that the adoption of SB 1368 regulations would have no significant adverse environmental impacts, the “Energy Commission staff anticipates that the POUs will still be able to procure sufficient energy resources from the market’s existing supply of electrical power to meet their existing needs. As a result, the proposed [SB 1368 regulations are] not expected to place significant additional demands on existing energy generation or transmission facilities or require the expansion or development of new energy generation or transmission facilities.”³⁰

The Negative Declaration goes on to state that the “need for additional electrical generation in California will largely be driven by population and economic growth” and “[s]taff expects that most of this need will be met by the development or *acquisition* of renewable energy resources as the POUs work to meet their Renewables Portfolio Standard commitments.”³¹ Furthermore, “[t]o meet these longer-term needs, the [SB 1368 regulations] could cause the POUs to shift more of their power procurements toward facilities that comply with the EPS.”³² The point is clear, the CEC expects and anticipates that POUs will procure more low- and zero-GHG resources from the western interconnect in order to meet the challenges of SB 1368. But, if SB 1368 regulations are intended to be a bridge to AB 32 as stated by the Joint Agencies, then it makes no sense to recommend regulations that the very same facilities that are used and *encouraged* for SB 1368 compliance should be disqualified from being used for AB 32 compliance.

9. **WREGIS became operational on June 23, 2007, and has the capability to track renewable resources from source to sink.** In line with the recommendation from the MAC Report, the Western Renewable Energy Generation Information System (“WREGIS”) is now functionally able to track imports. Although, WREGIS is voluntary, it is an important step forward in establishing a system to demonstrate that reductions of Statewide GHG Emissions are real, permanent, quantifiable, verifiable, and enforceable.

V. **COMMENTS ON QUESTIONS IN THE CPUC RULING**

- A. **Whether the criteria for assessing reporting protocols identified in Section 2.3 of the report are appropriate, and whether the Staff Proposal adequately complies with what you view as appropriate criteria.**

CMUA supports the criteria in Section 2.3 as discussed above.

³⁰ *Initial Study/Proposed Negative Declaration for Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard for Local Publicly Owned electric Utilities*, CEC-700-2007-006 (March 2007) at 5.

³¹ *Id.* at 6 (emphasis added).

³² *Id.*

B. Whether the intent should be to design a reporting protocol that could be adopted directly by other states in the region and, if so, whether modifications to the Staff proposal would be needed for this purpose.

CMUA supports the “expandability” of any reporting protocol recommendations developed by the Joint Agencies and this is a core reason for rejecting any discriminatory treatment of existing low- and zero-GHG resources located outside California.

C. How the proposed reporting requirements including, in particular, the use of estimates, could affect the integrity of GHG emission allowances and whether the requirements may have implications on the ability to trade GHG emission allowances with other regimes.

Emission estimates should be used as needed as long as they will be subject to continuous and immediate refinement when new information is learned.

D. Whether adoption of any part of the Staff proposal would require changes to any existing Public Utilities Commission and/or Energy Commission policies or the adoption of new policies by either agency.

CMUA is unable to answer this question at this time. Depending upon the scope of information needed to comply with the mandatory reporting rules and whether or not CARB intends to collect the data itself, the CEC may need to amend its data collection regulations in Title 20 of the California Code of Regulations.

E. In addition to any technical, policy, or other concerns, whether the Staff proposal raises any legal issues.

CMUA believes that Commerce Clause issues will be implicated should the CPUC/CEC adopt the Staff Proposal recommendations discriminating against existing low- and zero-GHG facilities. These issues are important and weighty and CMUA requests an opportunity for all parties to brief them separately.

F. Whether modifications to the Staff proposal would be needed to support implementation of the recommendations in the Market Advisory Committee’s draft report,¹ in particular, the “first seller” structure.

CMUA is unable to answer this question at this time. While the MAC report discusses a “first-seller” structure, exactly how the point of regulation would be determined, and how the “first seller” will be defined is not clear. CMUA looks forward to participating in the

Joint Agencies workshop to fully explore the ramifications of the MAC recommendations, especially as the use of a “first-seller” approach is distinguished from the load-based approach advocated by the CPUC.

VI. CONCLUSION

CMUA asks the Joint Agencies to revise the proposed protocols as discussed more fully above. In addition, CMUA supports the comments of the Los Angeles Department of Water & Power and the Sacramento Municipal Utilities District.

Dated: July 2, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached:

COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON THE JOINT STAFF PROPOSAL FOR A GHG REPORTING PROTOCOL

on all known parties to R.06-04-009 by transmitting an e-mail message with the document attached to each party named in the official service list. I served a copy of the document on those without e-mail addresses by mailing the document by first-class mail addressed as follows:

See attached service list

Executed this 2nd day of July 2007, at Sacramento, California.



Bruce McLaughlin

Service List R.06-04-009, updated June 20, 2007

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